84-1591

No. _____

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In the
Supreme Court of the United States
OCTOBER TERM, 1984

SUCCESSION OF CHARLES HASKEL GRICE,

SUSAN MARIE BREAUX BOUDREAUX,
Appellant,

AGNES BOUTTE GRICE,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Is the nineteen-year limitation period from an illegitimate child's birth, within which time such child is required to obtain a judgment of filiation in order to inherit from his parent, as required by Louisiana Civil Code Article 209, as reenacted by Act 527 of 1982, unconstitutional, in violation of the equal protection and due process clauses of the Fourteenth Amendment, as without a sufficient state interest? This question of state interest is at issue, inasmuch as this article also provides that an illegitimate child, in order to inherit from his parent, must prove filiation in a civil proceeding by the elevated burden of proof of **"clear and convincing evidence,"** filed within one year of the parent's death. The question is whether the state's interest to prevent fraudulent claims is satisfied by the requirement of such elevated burden of proof of "clear and convincing evidence" within one year of the parent's death, and that, therefore, the additional requirement that the civil proceeding be filed within nineteen years of the illegitimate child's birth is without any state interest, and, accordingly, unconstitutional.[1]

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1. The only parties to this proceeding are: Appellant, Susan Marie Boudreaux, daughter of the deceased; and Appellee, Agnes Boutte Grice, widow of the deceased. The deceased died March 8, 1983; Appellant was born June 21, 1951; and Civil Code Article 209, as reenacted by Act 527 of 1982, was effective September 10, 1982. The present proceedings were commenced by Appellant March 21, 1983.

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CONSTITUTION:

United States Constitution: Amendment XIV, Section 1, Equal Protection and Due Process Clauses 2

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Appellant,

AGNES BOUTTE GRICE,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The Opinion of the Supreme Court of Louisiana (App. A, *infra*, page 17), is reported at 462 So.2d 131, and it became final February 21, 1985, on the denial of rehearing (App. C, *infra*, page 36), which is not yet reported; and the dissenting opinion (App. B, *infra*, page 33), is not yet reported. The opinion of the Thirty-Second Judicial District Court, Terrebonne Parish, Louisiana (App. D, *infra*, page 40), is not reported. The caption contains the names of all parties to this proceeding.

JURISDICTION

Appellant, an illegitimate, appeals the judgment of the Supreme Court of Louisiana which held valid Louisiana Civil Code Article 209, reenacted by Act 527 of 1982, effective September 10, 1982, which barred illegitimates, but not legitimates, from inheriting from their parents unless they had obtained a judgment of filiation prior to their nineteenth birthday. Appellant appeals on the ground that such provision is without sufficient state interest in preventing fraudulent and stale claims, inasmuch as the state's said permissible interest was satisfied by other provisions of this Article 209 which require an illegitimate to prove his filiation by an elevated burden of proof, *e.g.*, "by clear and convincing evidence," by a proceeding filed within one year of the parent's death. Under the decisions of this Court such judgment of the Supreme Court of Louisiana is repugnant to the equal protection and due process clauses of the Fourteenth Amendment.

This Court has jurisdiction of this appeal under 28 U.S.C. 1257(2). Appellant's notice of appeal (App. F, *infra*, page 49) was filed March 7, 1985, in the Louisiana Supreme Court, and March 6, 1985, in the said district court.

CONSTITUTIONAL PROVISIONS INVOLVED

The equal protection and due process clauses of the Fourteenth Amendment were violated by the Supreme

Court of Louisiana in holding valid the nineteen-year limitation period barring illegitimates from inheriting from their parents in Louisiana Civil Code Article 209, reenacted by Act 527 of 1982, effective September 10, 1982, despite the other provisions of Article 209 which requires an illegitimate child to prove filiation by an elevated burden of proof of "clear and convincing evidence" in a civil proceeding filed within one year of the parent's death. This holding barred an illegitimate, who was born June 27, 1951, from inheriting from its parent who died March 8, 1983. This article 209 provided that an illegitimate, but not a legitimate, was barred from inheriting from a parent unless such illegitimate had obtained a judgment of filiation prior to its nineteenth birthday. The constitutional question is whether such nineteen-year limitation from a child's birth has any relation to the state's interest to prevent fraudulent claims, when this Article 209 also provides that an illegitimate child must prove filiation by the elevated burden of proof of "clear and convincing evidence" in a civil proceeding filed within one year of the parent's death. Such elevated burden of proof satisfies the state's interest in preventing fraudulent claims, and the nineteen-year limitation is, accordingly, without a state interest.

The judgment of the Louisiana Supreme Court became final on February 21, 1985, on the denial of Appellant's application for rehearing.

STATEMENT OF THE CASE

Charles Haskel Grice died intestate on March 8,

1983, and on March 21, 1983, on petition of Appellant, Susan Marie Boudreaux, alleging that she was his daughter and sole heir, the Thirty-Second Judicial District Court of Louisiana for the Parish of Terrebonne, appointed her provisional administratrix of his succession. Thereafterwards, on June 2, 1983, Appellee, Agnes Boutte Grice, alleging that she was the widow of the deceased, filed a petition in this succession proceeding to remove Appellant as provisional administratrix, on the grounds that more than nineteen years had elapsed **since the birth of Appellant (1951)**, and that under the provisions of Louisiana Civil Code Article 209, as reenacted by Act 527 of 1982, Appellant was barred from proving filiation with her father because of such nineteen-year period of limitation in such Civil Code Article 209. Accordingly, the widow alleged that she was the sole heir of the deceased, as he did not have any children.

This Civil Code Article 209, as enacted by Act 527 of 1982, effective September 10, 1982, required illegitimates, but not legitimates, to prove filiation in a civil proceeding by the elevated burden of proof of "clear and convincing evidence" instituted within one year of the deceased's death or within nineteen years of the child's birth, "whichever first occurs." Thus, such statute, in view of Appellant's birth in 1951, bars her right to inherit because she was born more than nineteen years prior to her parent's death, despite the "elevated burden of proof" otherwise required of her to prove filiation.

Susan Marie Boudreaux, Appellant, was born June 27, 1951, and her mother and her father, Charles Haskel

Grice, were never married to each other. On November 17, 1953, her father married Agnes Boutte Grice, Appellee, and they did not have any children. Under the law of Louisiana, in effect after the adoption of its 1974 Constitution, and prior to Civil Code Article 209, as reenacted by Act 527 of 1982, Appellant, as daughter of Charles Haskel Grice, was his sole heir, even though illegitimate, subject only to her proving in his succession after his death by a preponderance of evidence that she had been acknowledged by her father in private or public conversation, etc. Thus, prior to Civil Code Article 209 as enacted by Act 527 of 1982, illegitimates and legitimates were treated the same. Then, Civil Code Article 209, as reenacted by Act 527 of 1982, changed everything, and not only required an elevated burden of proof of "clear and convincing evidence," in a civil action within one year of the parent's death, but also required that the filiation be proved in a civil proceeding prior to the illegitimate's nineteenth birthday. Mr. Grice died March 8, 1983. This nineteen-year period from Appellant's birth in 1951 elapsed in 1970, and, accordingly, Appellee claims that Appellant was barred from proving filiation with her father under this nineteen-year limitation period, which elapsed long prior to said Act 527 of 1982.

The district court held this Article 209 unconstitutional.

The Supreme Court of Louisiana reversed and held the nineteen-year limitation from birth of the illegitimate was a permissible state interest to prevent fraud-

lent claims, despite the article's requirement of an elevated burden of proof of "clear and convincing evidence" in a civil proceeding filed within one year of the parent's death which satisfied the state's interest to prevent fraudulent claims.

REASONS WHY QUESTION PRESENTED IS SUBSTANTIAL AND REQUIRES PLENARY CONSIDERATION WITH BRIEFS ON THE MERITS AND ORAL ARGUMENTS

The equal protection and due process clauses of the Fourteenth Amendment draw into question the State of Louisiana's interest in this nineteen-year limitation of Civil Code Article 209 as reenacted by Act 527 of 1982, where such article also provides for an elevated burden of proof in a civil proceeding within one year of the parent's death to enable an illegitimate to inherit from a parent. This article bars all illegitimates from inheriting from their mother and their father unless they had obtained a judgment of filiation prior to their reaching the age of nineteen years, as a claimed state interest to prevent fraudulent claims. This, despite the other provision of this article which requires an illegitimate prove his filiation by an elevated burden of proof of "clear and convincing evidence," which provision satisfies the state's interest to prevent fraudulent claims. This Article 209 will effectively, as a practicable matter, bar all illegitimates from inheriting from either their mother or their father, with rare exceptions, for the reason that a child's inheritance only comes into exis-

tence upon the death of the parent, and the life expectancy of the vast majority of all parents is greater than nineteen years from the birth of their child. Further, there was no known "filiation" action in Louisiana required for an illegitimate to inherit from its parents, until the reenactment of this Article 209 in 1980.

The only claim of the state's interest in so barring illegitimates, but not so barring legitimates, is that such nineteen-year period will prevent fraudulent claims. But this Article 209 has other provisions which are designed to satisfy the state's interest to prevent fraudulent claims, *viz*:

(a) Article 209 requires an elevated standard of proof, *e.g.*, **"clear and convincing evidence"** by an illegitimate.

(b) Article 209 requires the short period of limitation of one year after the parent's death in which claims of an illegitimate could be filed against the estate of the parent.

Thus, this nineteen-year period from the birth of the child is without a substantial state interest to support it.

We quote the applicable provisions of Civil Code Article 209, reenacted by Act 527 of 1982, and effective September 10, 1982:

"B. A child not entitled to legitimate filiation . . . must prove filiation as to an alleged deceased par-

ent by clear and convincing evidence in a civil proceeding instituted . . . within the time limit provided in this article.

C. The proceeding required by this Article must be brought within one year of the death of the alleged parent or within nineteen years of the child's birth, whichever first occurs. . . . If the proceeding is not timely instituted, the child may not thereafter establish his filiation."

This Article 209 has provided an elevated standard of proof, *e.g.*, "by clear and convincing evidence," as was suggested as a means of satisfying the state's interest in preventing fraudulent claims in Mr. Justice Brennan's dissent in *Lalli v. Lalli*, 439 U.S. 259, 58 L.Ed.2d 503, 99 S.Ct. 518 (in which Mr. Justice White, Mr. Justice Marshall, and Mr. Justice Stevens joined), wherein it was said that a state, in satisfying its interest to prevent fraudulent claims,

"might require illegitimates to prove paternity by an elevated standard of proof, *e.g.*, clear and convincing evidence"

This Article 209 also provides a limitation period of one year from the death of the parent for the illegitimate to claim an inheritance, as was also suggested in said dissent as a means of satisfying the state's interest in preventing belated claims, wherein it was said that a state might enact,

"a short limitation period in which claims against the estate could be filed (which) could serve the asserted state interest"

Justice O'Connor in concurring in *Mills vs. Habluetzel*, 456 U.S. 91, 71 L.Ed.2d 770, 102 S.Ct. 1549 (and joined by the Chief Justice, Justice Brennan and Justice Blackmun), noted with reference to time limitations on proof problems:

> "there is nothing to indicate that the period is substantially related to the asserted interest in preventing the prosecution of stale or fraudulent claims."

The present statute is distinguished from the statute in *Lalli*: In *Lalli* it was held that the "permissible state interests" to prevent "spurious claims" supported the barring of all illegitimates from inheriting from their father unless there was an order of filiation prior to the father's death. But, here, Article 209 provides for the elevated burden of proof of "clear and convincing evidence" to prove filiation, as satisfying the permissible state's interest. In *Lalli*, it was stated that the state's interest was "Because of the particular problems of proof," and this Court there said in quoting from *Trimble v. Gordon*, 430 U.S. 762, 52 L.Ed.2d 31, 975 Ct. 1459, that the state's interest in such case

> "might justify a more demanding standard for illegitimate children claiming under their fathers' estate than that required . . . for legitimate children generally."

Such "more demanding standard" is that which Article 209 requires, that is, an elevated burden of proof of "clear and convincing evidence." So, it is inferred in *Lalli* that if the *Lalli* statute had required a "more demanding standard" of proof, such as "clear and con-

vincing evidence," the result there would have been different. In a footnote to *Lalli*, it was further stated:

> "In affirming the judgment below, we do not, of course, restrict a state's freedom to require proof of paternity by means other than a judicial decree. **Thus, a State may prescribe . . . other regularized procedure that would assure the authenticity of the acknowledgement.**"

This is just another way of saying that an elevated burden of proof such as "clear and convincing evidence" would satisfy a state's interest to prevent fraudulent claims. Thus, Article 209 has provided other procedures which will "assure the authenticity of the acknowledgment," as it provides for this elevated burden of proof in a civil proceeding filed within one year of the parent's death.

The dissent of Justice Brennan in *Lalli* points out that "an elevated standard of proof, *e.g.*, clear and convincing evidence" and "a short limitation period" would be "other regularized procedure that would assure the authenticity of the acknowledgement."

Thus, *Lalli* is distinguished from this case, as Article 209 has entirely different provisions than the statute in *Lalli*, and this Article 209's provisions of an elevated burden of proof within one year of the parent's death satisfy a state's interest to prevent fraudulent claims. In view of such provisions of Article 209, the additional limitation requiring a filiation judgment prior to the illegitimate's nineteenth birthday is not related to a state's interest to prevent fraudulent claims.

In the light of this elevated burden of proof, *Trimble v. Gordon*, 430 U.S. 762, 52 L.Ed.2d 31, 97 S.Ct. 1459 (1977), answers the contention that the nineteen-year limitation is the only way to prevent fraudulent claims, for it was there set forth:

> "Problems of proving paternity might justify a more demanding standard for illegitimate children"

In *Pickett v. Brown*, 462 U.S. 1, 76 L.Ed.2d 372, 103 S.Ct. 2199, the statute of limitation was held unconstitutional on the grounds that it was not,

> "related to the legitimate state interest in preventing litigation of stale or fraudulent claims,"

and this Court there said:

> "the relationship between a statute of limitation and the State's interest in preventing the litigation of stale or fraudulent paternity claims has become more attenuated as scientific advances in blood testing have alleviated the problems of proof surrounding paternity actions."

> "This is an appropriate consideration in determining whether a period of limitation governing paternity actions brought on behalf of illegitimate children is substantially related to a legitimate state interest."

Thus, the opinion in *Trimble*, the concurring opinion in *Mills*, and the opinion in *Pickett*, in effect, reason that, with reference to the present case, a state's interest in defeating fraudulent claims is satisfied with an ele-

vated burden of proof, such as by **"clear and convincing evidence,"** and a limitation period of one year after the parent's death within which the inheritance must be claimed. And, in the light of the fact that a child has no right of inheritance from its parent until the death of that parent, this elevated burden of proof, and this short period of one year after the parent's death within which to claim an inheritance, fully satisfy any substantially related state's interest in preventing fraudulent claims. Accordingly, in view of the state's interest being satisfied by such elevated burden of proof, the additional requirement that there be a judgment of filiation within nineteen years from a child's birth is not substantially related to a state's interest in preventing stale or fraudulent claims.

The Louisiana Supreme Court in searching for a permissible state interest to justify the denial of equal protection and due process to illegitimates, as guaranteed by the Fourteenth Amendment, by this nineteen-year-limitation of Article 209, set forth that "the nineteen-year limitation" for illegitimates "is substantially related to the state's interest," and "can be justified by the problems of proof surrounding paternity actions," and gave as its reasons: that, "The result in paternity suits frequently turns upon sketchy, conflicting testimony from only two witnesses" and "It is certainly conceivable that evidence essential to paternity suits will be lost in nineteen years and . . . increase the likelihood of fraudulent claims." But the Louisiana Supreme Court overlooked the provisions of this Article 209, which require the illegitimate child to "prove

filiation to an alleged deceased parent by **clear and convincing evidence,"** in a civil proceeding within one year from the parent's death. Such elevated burden of proof, and such short period, satisfy the state's interest to prevent fraudulent and stale claims. This elevated burden of proof could not be satisfied by any "sketchy, conflicting testimony from only two witnesses," as speculated by the Court, as such evidence would not be "clear and convincing" as required by Article 209. Accordingly, such reasoning of the Louisiana Supreme Court is without substance in view of the elevated burden of proof required by this Article 209. The speculation that evidence essential to paternity suits might be lost in nineteen years, and would thereby permit fraudulent claims, is fully answered by the provisions of Article 209 that proof must be by **"clear and convincing evidence"** in a civil proceeding filed within one year of the parent's death. Of course, this right to inherit will only come into existence upon the death of a parent. Thus, by Article 209's provisions, the state's interest to prevent fraudulent claims in "the just and orderly disposition of a decedent's property" is satisfied by this elevated burden of proof of "clear and convincing evidence" in a civil proceeding instituted "within one year of the death of the alleged parent."

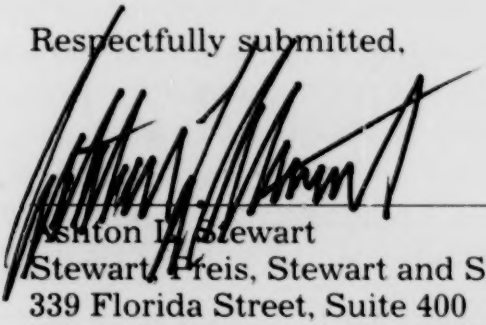
In sum, the nineteen-year period in Article 209 barring an illegitimate from inheriting from its parents denies Appellant the equal protection and due process guaranteed by the Fourteenth Amendment in view of the provisions of this statute for an elevated burden of proof in a civil proceeding within one year of the parent's death.

For these reasons, we submit that the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

CONCLUSION

Probable jurisdiction should be noted or the Court may grant summary reversal.

Respectfully submitted,



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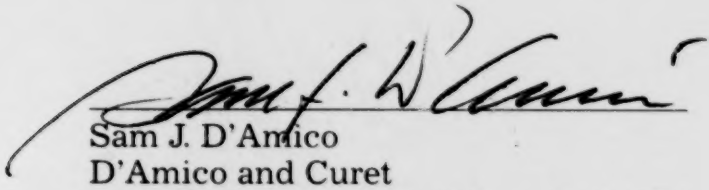

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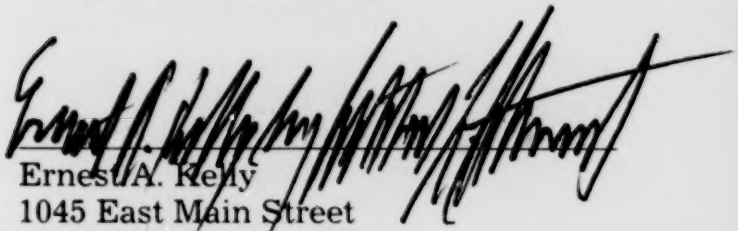

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CERTIFICATE OF SERVICE

I, Ashton L. Stewart, a member of the Bar of this Court, and Attorney of Record for Appellant, Susan Marie Boudreaux, in the foregoing Jurisdictional Statement, depose and say that on this day I served by U.S. mail a copy of the foregoing Jurisdictional Statement on Appellee, Agnes Boutte Grice, through her counsel of record, H. Sanders O'Neal, Esquire, Post Office Box 590, Houma, Louisiana 70369, and Hon. William Guste, Attorney General of the State of Louisiana, State Capitol, Baton Rouge, Louisiana.

All parties required to be served have been served.

Baton Rouge, Louisiana, March 21, 1985.

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APPENDIX A

SUCCESSION OF Charles Haskel GRICE.

No. 84-CA-1761.

Supreme Court of Louisiana.

Jan. 14, 1985.

Thirty-one-year-old woman filed petition claiming that decedent was her father and asking to be appointed provisional administratrix of his estate. After she was appointed provisional administratrix, decedent's widow filed a rule against her to show cause why she should not be barred from establishing any filiation and why she should not be disqualified from serving as administratrix. The Thirty-Second Judicial District Court, Parish of Terrebonne, Wilmore J. Broussard, Jr., J, entered judgment for the woman and the widow's application for writs was granted. The Supreme Court, Marcus, J., held that: (1) 19-year limitation in statute establishing time limits within which child out of wedlock must prove filiation is constitutional; (2) article which requires child out of wedlock to establish filiation within 19 years of birth unless that period is shortened by death of asserted parent is not unconstitutional on the ground of equal protection; and (3) woman was barred from proving paternal filiation to decedent and disqualified from appointment as provisional administratrix of his estate.

Reversed and remanded.

Watson and Calogero, JJ., dissented.

1. Constitutional Law §107

Newly created statute of limitations or one that shortens existing periods of limitation does not violate constitutional prohibition against divesting vested right provided it allows reasonable time for those affected by act to assert their rights. U.S.C.A. Const. Amends. 5,14.

2. Limitation of Actions §4(2)

Statute establishing time limits within which child out of wedlock must prove filiation, as amended to allow one-year grace period from enactment of amendments changing time limits within which such child could file suit to prove filiation regardless of new time limits, allowed daughter out of wedlock reasonable time to assert her right to prove paternal filiation. LSA-C.C. Art. 209.

3. Constitutional Law §213.1(1)

Although classifications based on illegitimacy are not "suspect" or subject to "strict scrutiny" under equal-protection analysis, scrutiny applied to them "is not a toothless one"; such classifications are unconstitutional unless they substantially relate to permissible state interests. U.S.C.A. Const.Amend. 14; LSA-Const. Art. 1, § 3.

4. Constitutional Law §225.1

In context of scrutinizing statutes for compliance with equal protection, state has substantial, permissible interest in providing for just and orderly disposition of property at death where intestate paternal inheritance of illegitimate children is concerned. U.S.C.A. Const.Amend. 14; LSA-Const. Art. 1, § 3.

5. Children Out-of-Wedlock §82

Means used by state to further its interest in just and orderly disposition of property at death where intestate paternal inheritance of illegitimate children is concerned may result in some inequity and still be constitutional, provided it is substantially related to that interest. U.S.C.A. Const.Amend. 14; LSA-Const. Art. 1, § 3.

6. Children Out-of-Wedlock § 82

If statute, governing paternal inheritance where out-of-wedlock children are involved inevitably and unnecessarily excludes some significant categories of out-of-wedlock children, it will not meet requirement that means adopted by state to further substantial, permissible interest be substantially related to that interest. U.S.C.A. Const.Amend. 14; LSA-Const. Art. 1, § 3.

7. Children Out-of-Wedlock §86

Child out of wedlock not filiated by initiative of parent is required to meet higher burden of proof of filiation to alleged deceased parent to offset fact that alleged father will no longer have opportunity to defend himself. LSA-C.C. art. 209, subd. B.

8. Limitation of Actions §4(2)

Although procedures for children out of wedlock to obtain support need not be coterminous with those accorded legitimate children in order to be constitutional, period for obtaining paternal support has to be long enough to provide reasonable opportunity for those with interests in children out of wedlock to bring suit on their behalf, and any time limit on that opportu-

nity has to be substantially related to state's interests. U.S.C.A. Const.Amend. 14; LSA-Const. Art. 1, § 3.

9. Limitation of Actions §4(2)

Nineteen-year limitation in statute establishing time limits within which child out of wedlock must prove filiation is sufficiently long to provide reasonable opportunity to those with interest in illegitimate children to bring suit on their behalf, is substantially related to recognized state interest in just and orderly disposition of decedent's property where intestate paternal inheritance is concerned in view of problems of proof surrounding paternity actions, and is constitutional. U.S.C.A. Const.Amend. 14; LSA-Const. Art. 1, § 3; LSA-C.C. arts. 209, 209, subd. C.

10. Limitation of Actions §4(2)

The 1984 amendment to statute establishing time limitations within which child out of wedlock must prove filiation which creates exception to 19-year limitation "for the sole purpose" of establishing right to recover damages does not undermine substantial relation between limitation period and state's interests where intestate paternal inheritance by child out of wedlock is concerned, but illustrates that state's interest in providing for just and orderly disposition of property at death is greater than its interest in distributing an award for damages. LSA-C.C. Arts. 209, 2315; U.S.C.A. Const.Amend. 14; LSA-Const. Art. 1, § 3.

11. Limitation of Actions §4(2)

Article which requires child out of wedlock to establish filiation within 19 years of birth unless that period is shortened by death of asserted parent is not

unconstitutional on the ground that it discriminates against illegitimate children as compared to their parents with regard to their respective rights of inheritance. U.S.C.A. Const.Amend. 14; LSA-Const. Art. 1, § 3; LSA-C.C. arts 209, 209, subd. C.

12. Children Out-of-Wedlock §86

Executors and Administrators §22(1)

Woman who filed petition claiming that decedent was her father within one month of his death at time when she was 31 years of age was barred from proving paternal filiation to decedent and disqualified from appointment as provisional administratrix of his estate. LSA-C.C. arts. 209, 3097.

H. Sanders O'Neal, Houma, for appellant.

Sam J. D'Amico, Ashton S. Stewart, Baton Rouge, Keith Whipple, Ernest Kelly, Houma, for appellee.

MARCUS, Justice.

This case presents a challenge to the constitutionality of La.Civ.Code Art. 209 which requires illegitimate children who would inherit from their fathers by intestate succession to institute filiation proceedings within certain limitations. Legitimate children are not subject to the same requirement.

Susan Marie Boudreaux was born Susan Marie Breaux on June 27, 1951, to Velma Vivian Breaux. The father's name was left blank on her birth certificate. Charles Haskel Grice was married but once and then to

Agnes Boutte Grice on November 17, 1953. No children were born of the marriage. Mr. Grice died intestate on March 8, 1983. He was predeceased by his parents and survived by his wife and brothers and sisters. Less than one month later, Susan Marie Boudreaux, then thirty-one years of age, filed a petition claiming that Charles Haskel Grice was her father and she was his sole surviving heir and asking to be appointed provisional administratrix of his estate. She was duly appointed provisional administratrix and, after complying with law, letters of administration were issued to her. Mr. Grice's widow, Agnes Boutte Grice, thereupon filed a rule against Susan Marie Boudreaux to show cause why she should not be barred by the time limitations of La.Civ.Code Art. 209 from establishing filiation to Charles Haskel Grice and why she should not be disqualified from serving as administratrix. Susan Marie Boudreaux countered that Art. 209 was unconstitutional on equal protection grounds insofar as it requires that proceedings to establish filiation be brought within nineteen years of birth and furthermore that lack of legitimacy was not one of the grounds enumerated in La.Code Civ.P. Art. 3097 for disqualification of an administratrix. After considering the pleadings and memoranda submitted by both parties,[1] the trial judge held Art. 209 unconstitutional and dismissed the rule to bar Susan Marie Boudreaux from establishing proof of filiation and to disqualify her as administratrix. Mrs. Grice applied to this court for writs. Her application was granted and docketed as an appeal.[2]

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1. At the hearing on the rule, after a discussion at the bench, the trial judge granted both parties leave to submit memoranda after which the matter would be taken under advisement.

2. 454 So.2d 1122 (La.1984). *See* La.Const. Art. 5, § 5(D)(1).

[1, 2] La.Civ.Code Art. 209 provides:

A. A child not entitled to legitimate filiation nor filiated by the initiative of the parent by legitimation or by acknowledgment under Article 203 must prove filiation as to an alleged living parent by a preponderance of the evidence in a civil proceeding instituted by the child or on his behalf within the time limit provided in this Article.

B. A child not entitled to legitimate filiation nor filiated by the initiative of the parent by legitimation or by acknowledgment under Article 203 must prove filiation as to an alleged deceased parent by clear and convincing evidence in a civil proceeding instituted by the child or on his behalf within the time limit provided in this Article.

C. *The proceeding required by this Article must be brought within one year of the death of the alleged parent or within nineteen years of the child's birth, whichever first occurs.* This time limitation shall run against all persons, including minors and interdicts. If the proceeding is not timely instituted, the child may not thereafter establish his filiation, except for the sole purpose of establishing the right to recover damages under Article 2315. A proceeding for that purpose may be brought within one year of the death of the alleged parent and may be cumulated with the action to recover damages.

D. The right to bring this proceeding is heritable. (Emphasis added.)[3]

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3. Article 209 was amended and reenacted by La. Acts 1980, No. 549, eff. Sept. 12, 1980, to provide a procedure and time limitations for proceedings to establish filiation and to provide that failure to institute timely such a proceeding would bar the claims of such

[3] The equal protection clause of the fourteenth amendment of the federal constitution and article 1 § 3 of our state constitution provide that no person shall be denied equal protection of the laws. Although classifications based on illegitimacy are not "suspect" or subject to "strict scrutiny" under equal protection analysis, the scrutiny applied to them "is not a toothless one. . . . " *Trimble v. Gordon*, 430 U.S. 762 (1977); *Mathews v. Lucas*, 427 U.S. 495, 96 S.Ct. 2755, 49 L.Ed.2d 651 (1976). Such classifications are unconstitutional unless they are substantially related to permissible state interests. *Pickett v. Brown*, 462 U.S. 1, 103 S.Ct. 2199, 76 L.Ed.2d 372 (1983); *Lalli v. Lalli*, 439 U.S. 259, 99 S.Ct. 518, 58 L.Ed.2d 503 (1978).

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persons in the successions of their alleged parents. Section 4 provided, however, that any illegitimate child nineteen years or older would have one year from the effective date of the act to bring a civil proceeding to establish filiation.

Article 209 was further amended by La. Acts 1981, No. 720, eff. Sept. 11, 1981, and Section 2 thereof provided that any person against whom the time period provided in the Act would otherwise have accrued would have one year from its effective date to bring a filiation proceeding. Children who did not file suit within the one-year grace period of the prior statute were not precluded from attempting to prove filiation within this new one-year grace period. *Succession of Theriot*, 428 So.2d 1017 (La.App. 1st Cir.1983).

A newly created statute of limitations or one which shortens existing periods of limitation does not violate the constitutional prohibition against divesting a vested right provided it allows a reasonable time for those affected by the act to assert their rights. *Lott v. Haley*, 370 So.2d 521 (La.1979); *Cooper v. Lykes*, 218 La. 251, 49 So.2d 3 (1950).

Thus, Susan Marie Boudreaux had two separate one-year grace periods within which she could have, but failed to, institute proceedings to prove paternal filiation. Article 209, as amended, allowed a reasonable time for her to assert her right to prove paternal filiation.

Our inquiry is focused narrowly. We are asked to decide whether the requirement of Art. 209 that filiation proceedings be brought "within nineteen years of the child's birth" is substantially related to permissible state interests when the illegitimate child is seeking paternal inheritance by intestate succession.[4]

The decisions of the United States Supreme Court in *Trimble v. Gordon*, *supra*, and *Lalli v. Lalli*, *supra*, are particularly relevant to our determination. In *Trimble*, the Court reviewed an Illinois statute which provided that a child born out of wedlock could inherit from his intestate father only if the father had "acknowledged" him and the child had been legitimized by the intermarriage of the parents. The Court recognized that the state has an interest in "the orderly disposition of property at death" and that devising an appropriate legal framework in furtherance of that interest "is a matter particularly within the competence of the individual States." An important aspect of that framework, the Court recognized, is a response to the often difficult problem of proving paternity and the related danger of spurious claims. These difficulties,

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4. We do not address the constitutionality of La.Civ.Code Art. 209 vis-a-vis the illegitimate child's right to inherit from his mother, as that issue is not before us. *Cf. Lalli v. Lalli*, 439 U.S. 259, 99 S.Ct. 518, 58 L.Ed.2d 503 (1978) (issue raised by implication).

Nor do we address the constitutionality of Art. 209 where an illegitimate child is seeking support from an alleged parent. *Cf. Pickett v. Brown*, 462 U.S. 1, 103 S.Ct. 2199, 76 L.Ed.2d 372 (1983); *Mills v. Habluetzel*, 456 U.S. 91, 102 S.Ct. 1549, 91 L.Ed.2d 770 (1982); *Gomez v. Perez*, 409 U.S. 535, 93 S.Ct. 872, 35 L.Ed.2d 56 (1973); *Daniel v. Collier*, 317 N.W.2d 293 (Ct. of App. of Mich.1982), *vacated* ___ U.S. ___, 104 S.Ct. 53, 78 L.Ed.2d 72 (1983), *on remand*, 130 Mich.App. 345, 343 N.W.2d 16 (Ct. of App.1983); *Astemborski v. Susmarski*, 499 Pa. 99, 451 A.2d 1012 (1982), *vacated* ___ U.S. ___, 103 S.Ct. 3105, 77 L.Ed.2d 1360 (1983), *on remand*, 502 Pa. 409, 466 A.2d 1018 (1983).

the Court said, "might justify a more demanding standard for illegitimate children claiming under their fathers' estates than that required either for illegitimate children claiming under their mothers' estates or for legitimate children generally." However, the Court found that the Illinois statute was constitutionally flawed because its reach "extended well beyond [these] asserted purposes." By insisting upon not only an acknowledgment by the father but also the intermarriage of the parents, the statute excluded "at least some significant categories of illegitimate children of intestate men" whose inheritance rights could be recognized without jeopardizing the state's interest.

In *Lalli*, the Court upheld a New York statute which allows an illegitimate to inherit from his intestate father, but only if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity. The Court found that this single statutory requirement, a judicial order of filiation declaring paternity before the father dies, is evidentiary in nature and does not "inevitably disqualif[y] an unnecessarily large number of children born out of wedlock." The Court further found that this statutory requirement is substantially related to the state's justifiable purposes in that (1) resolution of claims of paternity is enhanced by placing paternity disputes in a judicial forum during the lifetime of the father, giving him an opportunity to defend his reputation, and (2) the administration of an estate is facilitated, and the possibility of delay and uncertainty minimized, where the entitlement of an illegitimate child to notice and participation is a matter of judicial record before the administration commences. In upholding the statute, the Court emphasized that its focus was on the statute's relation to state interests, not on its "abstract fairness." Few statutory classifications, the Court noted, are

entirely free from the criticism that they sometimes produce inequitable results, and it is not the Court's function "to hypothesize independently on the desirability or feasibility of any possible alternative[s]" to the statutory scheme formulated by the state.[5]

[4–6] From *Trimble* and *Lalli*, we conclude that (1) the state has a substantial, permissible interest in providing for the just and orderly disposition of property at death where intestate paternal inheritance of illegitimate children is concerned, an area involving unique and difficult problems of proof, and (2) the means adopted by the state to further that interest may result in some inequity and still be constitutional, provided it is substantially related to that interest. Given a recognized permissible state interest, we must now determine whether the means adopted in Art. 209 to further that interest is substantially related to it. From *Trimble*, we further conclude that this substantial relation requirement will not be met if the statute inevitably and unnecessarily excludes some significant categories of illegitimate children.[6]

[7] Like the statute in *Lalli* and unlike that in *Trimble*, Art. 209 does not inevitably exclude significant categories of illegitimate children from intestate paternal inheritance. The New York statute in *Lalli* allowed

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5. *See also, Mathews v. Lucas*, 427 U.S. 495, 96 S.Ct. 2755, 49 L.Ed.2d 651 (1976).

6. Hence, in *Succession of Brown*, 388 So.2d 1151 (1980), this court held unconstitutional La.Civ.Code Art. 919 which completely excluded acknowledged illegitimates from participating in the succession of their father when he was survived by other relatives, since the legislature could have given such children "some way" to obtain paternal inheritance while still anticipating and solving the problems facing the state.

inheritance provided the child obtained a judicial order of filiation declaring paternity before his father died.[7] Article 209 allows intestate paternal inheritance by an illegitimate not filiated by the initiative of the father, but only if proceedings to establish filiation are instituted within nineteen years from birth or, should the alleged father die within that time, then within one year of his death.[8] Since under Art. 209 the child will never have more than nineteen years to institute filiation proceedings, whereas under the New York statute the child has until the father's death to obtain a judicial declaration of paternity, the question remains whether this difference makes Art. 209 unconstitutional, i.e., creates unnecessary discrimination where the statute in *Lalli* did not.

[8] In answering this question, we draw our guidance by analogy from the United States Supreme Court's recent decisions concerning time limitations on the support rights of illegitimate children. In *Mills v. Habluetzel*, 456 U.S. 91, 102 S.Ct. 1549, 71 L.Ed.2d 770

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7. The New York statute in *Lalli* required not only that the order of filiation be made during the lifetime of the father, but that the proceeding in which it is sought be commenced "during the pregnancy of the mother or within two years from the birth of the child." The New York Court of Appeals declined to rule on the constitutionality of the two-year limitation and therefore the question was not before the United States Supreme Court. *See Lalli*, n. 5.

8. In this latter situation, the proceedings to establish filiation should be cumulated with the petition asserting succession rights and be made a part of the succession proceedings. (*See* La.Civ.Code Art. 209(C) as to filiation proceedings "cumulated" with action to recover damages under La.Civ.Code Art. 2315).

Under Section B of Art. 209, the child will be required to meet a higher burden of proof, to offset the fact the alleged father will no longer have an opportunity to defend himself.

(1982), the Court considered the sufficiency of a "one year from birth" statute of limitation on paternity suits. The Court's equal protection analysis focused on two related requirements. Although the procedures for illegitimate children need not be coterminous with those accorded legitimate children, (1) the period for obtaining paternal support has to be long enough to provide a reasonable opportunity for those with an interest in illegitimate children to bring suit on their behalf, and (2) any time limit on that opportunity has to be substantially related to the state's interest. The Court held that the "one year from birth" limitation in *Mills* failed to satisfy either requirement. In *Pickett v. Brown*, 462 U.S. 1, 103 S.Ct. 2199, 76 L.Ed.2d 372 (1983), the Court analyzed a "two years from birth" limitation on paternity and child support actions and found that that time period also failed to satisfy the two requirements in *Mills*.[9]

We now consider whether the nineteen years from birth limitation contained in Art. 209(C) satisfies the two requirements set forth by the United States Supreme Court in *Mills*. Under *Mills*, the first question is whether the nineteen-year limitation is sufficiently long to provide a reasonable opportunity to those with an interest in illegitimate children to bring suit on their behalf. We consider that the financial, emotional and family difficulties that often attend the birth of an illegitimate child should be sufficiently resolved within

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9. *See also, Daniel v. Collier, supra*, and *Astemborski v. Susmarski, supra*, cited in footnote 4. Both cases involved six-year statutes of limitation. The state courts upheld the statutes. Directed by the United States Supreme Court to reconsider the statutes in light of *Pickett, supra*, the courts affirmed their original findings of constitutionality. No appeals were taken from the final state decisions.

nineteen years to enable the child's mother or other interested party to institute filiation proceedings against an alleged father. The legislature could reasonably conclude that those interested in illegitimate children should be required to exercise such foresight on their behalf and that nineteen years gives them ample opportunity to do so. Additionally, we note that the nineteen-year limitation gives the child one year after minority to institute filiation proceedings on his own behalf, so that proof of his paternity and preservation of his rights stemming therefrom are not totally dependent on others.

[9] The second inquiry under *Mills* is whether the nineteen-year limitation of Art. 209(C) is substantially related to the state's interest. The recognized state interest in this case is the just and orderly disposition of a decedent's property where intestate paternal inheritance is concerned, an area involving unique and difficult problems of proof. We find that the nineteen-year limitation is substantially related to this interest. A nineteen-year limitation can be justified by the problems of proof surrounding paternity actions. The result in paternity suits frequently turns upon sketchy, conflicting testimony from only two witnesses. It is certainly conceivable that evidence essential to paternity suits will be lost in nineteen years and it is evident that the passage of nineteen years will appreciably increase the likelihood of fraudulent claims. Additionally, scientific advances in blood testing have not yet negated the relation between the nineteen-year limitation and the state's need to handle the proof problems it encounters in paternity suits.[10] Traditional blood tests only prove nonpaternity, not the fact of paternity.

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10. *Mills, supra*, n. 4.

[10] We consider that the 1984 amendment to Art. 209(C) creating an exception to the nineteen-year limitation "for the sole purpose" of establishing a right to recover damages under La.Civ.Code Art. 2315,[11] does not undermine the substantial relation between that limitation period and the state's interest where intestate paternal inheritance by an illegitimate is concerned. In fact, this limited exception illustrates that the state's interest in providing for the just and orderly disposition of property at death is greater than its interest in the distribution of an award for damages under Art. 2315. Additionally, a claim of filiation raised in the context of an action under Art. 2315 becomes part of, and is unlikely to prolong, already ongoing litigation or settlement negotiations. By requiring that filiation proceedings be brought within nineteen years, Art. 209 facilitates the administration of estates and minimizes the possibility of delay and uncertainty. Entitlement of the illegitimate child to notice and participation will be a matter of judicial record before administration of the estate commences, except in the limited case where the alleged father dies within nineteen years, in which case filiation proceedings will have to be brought within one year.

[11, 12] Hence, we conclude that (1) the nineteen-year limitation contained in La.Civ.Code Art. 209(C) is sufficiently long to provide a reasonable opportunity to those with an interest in illegitimate children to bring suit on their behalf and (2) the nineteen-year limitation on that opportunity is substantially related to the state's interest in providing for the just and orderly disposition of a decedent's property where paternal inheritance is concerned, an area involving unique and difficult prob-

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11. La. Acts 1984, No. 810.

lems of proof. We therefore uphold the constitutionality of Art. 209 of the Civil Code.[12] In view of this holding, Susan Marie Boudreaux is barred from proving paternal filiation to Charles Haskel Grice and is therefore disqualified from appointment as provisional administratrix of his estate under La.Code Civ.P. Art. 3097.[13]

DECREE

For the reasons assigned, the rulings of the trial judge are reversed. The case is remanded to the district court for further proceedings in accordance with the views expressed herein.

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12. Having reached this conclusion, *a fortiori*, we reject Susan Marie Boudreaux's contention, raised in brief to this court, that Art. 209 is unconstitutional because it discriminates against illegitimate children as compared to their parents with regard to their respective rights of inheritance.

13. La.Code Civ.P. Art. 3097 provides in pertinent part:

No person may be appointed dative testamentary executor, provisional administrator, or administrator who is not the surviving spouse, heir, legatee, legal representative of an heir or legatee, or a creditor of the deceased, or the nominee of the surviving spouse, heir, legatee, or legal representative of an heir or legatee of the deceased.

APPENDIX B

SUPREME COURT OF LOUISIANA

No. 84-CA-1761

SUCCESSION OF CHARLES HASKEL GRICE.

CALOGERO, Justice, dissenting

I dissent from the majority opinion which upholds the constitutionality of La. C.C. Art. 209, limiting the right of an illegitimate to prove his filiation, for succession purposes, to proceedings "brought within one year of the death of the alleged parent or within nineteen years of the child's birth, which ever first occurs."

The United States Supreme Court has held that classifications based on birth (illegitimacy) are unconstitutional unless they are substantially related to important state interests. *Pickett v. Brown*, ___ U.S. ___, 103 S.Ct. 2199, 76 L.Ed.2d 372 (1983); *Lalli v. Lalli*, 439 U.S. 259, 99 S.Ct. 518, 58 L.Ed 2d 503 (1978). Our own state constitution, Article I, Section 3, provides that "[n]o law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth." This provision includes within its scope unreasonable discrimination against a person because of illegitimacy. Accordingly, the scrutiny given a provision which does draw a classification based on birth is a heightened one.

Our inquiry in this case is whether the limitation set in La. C.C. Art. 209, that filiation proceedings, when an illegitimate child is seeking paternal inheritance by intestate succession, be brought "within nineteen years of the child's birth," is substantially related to permissible state interests (chiefly in the orderly disposition of

property at death) or whether it goes beyond what is necessary to accomplish the purpose.

A range has already been established by the United States Supreme Court within which we should work. In *Lalli v. Lalli, supra*, the Court upheld a New York provision which required proof of paternity prior to the death of the alleged father of the child. The Court found that that provision substantially related to the state's interest in promoting the orderly disposition of property at death. At the other end of the spectrum, the Court struck down provisions which required such proof (in **support** cases) within respective periods of one and two years from birth. *Mills v. Habluetzel*, 456 U.S. 91, 102 S.Ct. 1549, 71 L.Ed.2d 770 (1982) and *Pickett v. Brown*, ____ U.S. ____, 103 S.Ct. 2199, 76 L.Ed.2d 372 (1983) respectively.

Thus, the question presented is whether the limitation set by La. C.C. Art. 209, "within nineteen years of the child's birth" falls closer to the acceptable end of the range established in *Lalli* (before the death of the alleged father), or the unacceptable range established in *Mills* and *Pickett* (within two years of birth in support cases). In my view it falls closer to the latter.

The state purpose behind the statute is the state's interest in the orderly disposition of property at death. In my view, that interest is sufficiently fostered by a requirement that the illegitimate prove his filiation before the death of the alleged father even if that is beyond the child's 19th birthday. A child between the ages of 1 and 19 more often than not has no interest in, or thought concerning his potential inheritance rights. This is a different situation from that concerning support rights, where paternity and the obligation to support take on real significance immediately upon birth

and in the outset years thereafter. The requirement that the proceedings must be brought "within nineteen years of the child's birth" goes beyond what is necessary to give effect to the legitimate state interest in the orderly disposition of property at death and falls into the category of unnecessary discrimination based on birth prohibited by our state constitution as well as the United States Constitution.

For these reasons, I dissent from the majority opinion upholding the constitutionality of La. C.C., Art. 209.

APPENDIX C

Supreme Court
State of Louisiana
New Orleans

February 21, 1985

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IN RE: Succession of Charles Haskel Grice
No. 84-CA-1761

Dear Counsel:

Enclosed please find a News Release documenting this court's denial of the application for rehearing, in the above entitled referenced case.

This judgment is now final. By copy of this letter we are advising the trial court of the finality of this case and

instructing them to do whatever is necessary to implement the judgment.

With kindest regards, I remain,

Very truly yours,

s/Frans J. Labranche, Jr.
Clerk of Court

FJLJr/jlr
Encl:
ccs: Hon. Wilmore Broussard
Hon. I. Robert Boudreaux
H. Sanders O'Neal
Keith Whipple, Esq.

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

NEWS RELEASE # 26

FROM: Clerk of Supreme Court of Louisiana

On the **21st day of February, 1985,** the following action was taken by the Supreme Court of Louisiana in the cases listed below:

REHEARINGS DENIED: CASES FINAL 2/21/85

84-CA-1761 Succession of Charles Haskel Grice
CALOGERO & WATSON, J.J., would grant a rehearing.

APPENDIX D

SUCCESSION OF	* 32ND JUDICIAL * DISTRICT COURT *
CHARLES HASKEL GRICE	* PARISH OF * TERREBONNE *
PROBATE NO. 9034	* STATE OF LOUISIANA

****

JUDGMENT

****

This matter came on for hearing on July 15, 1983, pursuant to previous fixing, there being present:

H. SANDERS O'NEAL, attorney for plaintiff in rule, Agnes Boutte Grice, and

ERNEST A. KELLY, attorney for defendant in rule, Susan Marie Boudreaux;

The Court, after considering the evidence, law, pleadings, arguments and memorandums of counsel, is of the opinion that there should be judgment herein in favor of defendant in rule, Susan Marie Boudreaux, and against the plaintiff in rule, Agnes Boutte Grice, for written reasons this day assigned; accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that Article 209 of the Louisiana Civil Code is in violation of the Constitutions of the United States and State of Louisiana, and is null, void and unconstitutional;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of

defendant in rule, Susan Marie Boudreaux, and against the plaintiff in rule, Agnes Boutte Grice, denying, overruling and dismissing the rule to disqualify Susan Marie Boudreaux as administratrix and the rule to bar her from establishing proof of filiation to Charles Haskel Grice.

JUDGMENT RENDERED, READ AND SIGNED in Chambers at Houma, Louisiana on this 28th day of June, 1984.

/s/ WILMORE J. BROUSSARD, JR.
DISTRICT JUDGE

SUCCESSION OF	* 32ND JUDICIAL * DISTRICT COURT *
CHARLES HASKEL GRICE	* PARISH OF * TERREBONNE *
PROBATE NO. 9034	* STATE OF LOUISIANA

****

REASONS FOR JUDGMENT

****

Susan Marie Breaux was born on June 27, 1951 at Ellender Memorial Hospital in Terrebonne Parish, Louisiana to Velma Vivian Breaux. The father's name was left blank on the birth certificate. Miss Breaux married Kurt Joseph Boudreaux on July 29, 1970.

Charles Haskel Grice was married only once and then to Agnes Boutte Grice on November 17, 1953. Mr. Grice died intestate on March 8, 1983. He was survived

by his wife, Agnes Boutte Grice. No children were born of the marriage.

On March 21, 1983 Susan Marie Boudreaux filed a petition seeking appointment as the provisional administratrix of this succession and notice of the filing of any application for appointment as administrator of the succession.

In the petition Mrs. Boudreaux alleged that she was the daughter of the decedent and as such his sole surviving heir. Petitioner has not yet asked to be placed in possession of the decedent's estate or to be adjudicated as an heir of the deceased.

After compliance with the requisite of law, Letters of Provisional Administration were issued to Susan Marie Boudreaux on March 22, 1983.

The decedent's surviving spouse in community, Agnes Boutte Grice, filed a rule to disqualify Susan Marie Boudreaux as administratrix and to bar her from establishing proof of filiation to Charles Haskel Grice. Mrs. Grice alleges that Mrs. Boudreaux is barred from proving her relationship to the decedent under the provisions of Civil Code Article 209.

Civil Code Article 209 provides as follows:

"A. A child not entitled to legitimate filiation nor filiated by the initiative of the parent by legitimation or by acknowledgment under Article 203 must prove filiation as to an alleged living parent by a preponderance of the evidence in a civil proceeding instituted by the child or on his behalf within the time limit provided in this article.

B. A child not entitled to legitimate filiation nor filiated by the initiative of the parent by legitimation or by acknowledgment under Article 203 must prove filiation as to an alleged deceased parent by clear and convincing evidence in a civil proceeding instituted by the child or on his behalf within the time limit provided in this article.

C. The proceeding required by this article must be brought within one year of the death of the alleged parent or within nineteen years of the child's birth, whichever first occurs. This time limitation shall run against all persons, including minors and interdicts. If this proceeding is not timely instituted, the child may not thereafter establish his filiation.

D. The right to bring this proceeding is heritable."

There is no question that the provisions of Civil Code Article 209 have not been complied with by Mrs. Boudreaux. No civil proceeding was ever brought to establish the filiation between Mr. Grice and Mrs. Boudreaux. Mrs. Boudreaux alleges that the statute is unconstitutional under both the Federal and State Constitutions.

On its face the statute exacts obligations of the illegitimate to qualify for inheritance that are not imposed on the legitimate.

The Court is aware that the United States Supreme Court has held a similar statute from the State of New York valid under the Federal Constitution. See *Lalli v. Lalli*, 439 U.S. 259, 99 S.Ct. 518, 58 L.Ed.2d 503 (U.S. S.Ct. 1978). However, the Court notes that the majority

opinion penned by Mr. Justice Powell was joined by only two other members of the court. Three justices filed concurring opinions and three justices filed dissenting opinions.

While the exact issue involved in *Lalli* and this case have not been presented to the Supreme Court since *Lalli*, the Court has in a series of decisions broadened the rights of illegitimates and narrowed the ability of the states to discriminate against illegitimates. The United States Supreme Court has not hesitated in its recent decisions to strike down statutes that discriminate against illegitimates. See *Mills v. Hableutzel*, 456 U.S. 91, 102 S.Ct. 1549, 71 L.Ed.2d 770 (U.S. S.Ct. 1982); *Pickett v. Brown* ___ U.S. ___ 103 S.Ct. 2199, 76 L.Ed.2d 372 (U.S. S.Ct. 1983).

The clear inference which the United States Supreme Court is sending is that all discrimination against illegitimates must cease.

The Louisiana Supreme Court is moving in the same direction in its interpretation of the Louisiana Constitution. In *Jordon v. Cosey*, 434 So 2d 386 (La.S.Ct. 1983), the Court stated at page 388:

> "We have held, after reviewing the constitutional debates concerning La. Const. Art. 1 Sec. 83 and find that both the proponents and opponents noted that it included within its scope unreasonable discrimination against a person because of illegitimacy, that 'the entire range of discriminatory practices based on illegitimacy was encompassed by the section.' *Succession of Clivens*, 426 So 2d 585 (La. 1983), On Rehearing; *Succession of Thompson*, 367 So 2d 796 (La. 1979). Since the adoption of the 1974 Constitution, this Court has consistently held that La.

> Const. Art. 1 Sec. 3 specifically prohibits arbitrary discrimination against a person because of illegitimacy and has consistently struck down suspect statutes like La. C.C. Art. 1486 which it has been called upon to review. *Succession of Clivens*, supra; *Succession of Brown*, 388 So 2d 1151 (La. 1980); *Succession of Thompson*, supra; *Succession of Robins*, 349 So 2d 276 (La. 1977)."

The Court went on to require strict scrutiny of any statute which discriminates against illegitimates.

The statute discriminates against illegitimates in at least three ways. First, it requires them to prove their filiation in a suit brought for that purpose while legitimates are allowed to prove their filiation in the succession proceeding itself. Second, the burden of proof for illegitimates is more stringent, i.e., clear and convincing evidence as opposed to a preponderance of the evidence required of legitimates. Finally, the prescriptive period applied to illegitimates in order to participate in their parent's succession is shorter than the period which is applied to legitimates.

The primary state interest is to provide for the just and orderly disposition of property upon the death of the decedent. The New York statute in question in *Lalli*, supra, was different from this Louisiana statute in that it required a judgment of filiation only to inherit from the father, not the mother. The Court indicated such a requirement as to the mother would not be constitutional. The Louisiana statute applies to both.

The Court can envision no great burden in allowing all alleged sibling, whether legitimate or illegitimate, to make their claims in the succession proceedings. The State could achieve its goal of orderly disposition of

property by requiring all heirs, both legitimate and illegitimate, to make their claims in a succession proceeding within a specified time of the death of the decedent. There is simply no reason to discriminate against illegitimates to achieve this goal.

The fact that proof, particularly of paternity, may be difficult after the death of the parent should not disqualify illegitimates from sharing in their parent's succession. Problems of proof simply mean that fewer illegitimates may be able to establish their filiation in the succession proceedings.

Therefore, the Court is satisfied that Civil Code Article 209 violates both the Federal and State Constitutions and as such is unenforceable.

For these reasons the Court will deny, overrule and dismiss the rule to disqualify Susan Marie Boudreaux as administratrix and the rule to bar her from establishing proof of filiation to Charles Haskel Grice.

These reasons for judgment are rendered, read and signed in Chambers at Houma, Louisiana on this 28th day of June, 1984.

/s/ WILMORE J. BROUSSARD, JR.
DISTRICT JUDGE

APPENDIX E

Act No. 527

EFFECTIVE 9-10-82

SENATE BILL NO. 445

BY: MESSRS. CASEY AND NELSON.

AN ACT

To amend and reenact Civil Code Art. 209 relative to proof of filiation, to require that where an alleged parent is deceased, filiation be proved by clear and convincing evidence, and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Art. 209 is hereby amended and reenacted to read as follows:

Art. 209. Proof of filiation

A. A child not entitled to legitimate filiation nor filiated by the initiative of the parent by legitimation or by acknowledgment under Article 203 must prove filiation as to an alleged living parent by a preponderance of the evidence in a civil proceeding instituted* by the child or on his behalf within the time limit provided in this Article.

B. A child not entitled to legitimate filiation nor

*As it appears in the enrolled bill.

filiated by the initiative of the parent by legitimation or by acknowledgment under Article 203 must prove filiation as to an alleged deceased parent by clear and convincing evidence in a civil proceeding instituted by the child or on his behalf within the time limit provided in this Article.

C. The proceeding required by this Article must be brought within one year of the death of the alleged parent or within nineteen years of the child's birth, whichever first occurs. This time limitation shall run against all persons, including minors and interdicts. If the proceeding is not timely instituted, the child may not thereafter establish his filiation.

D. The right to bring this proceeding is heritable.

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provision, item, or application, and to this end the provisions of this Act are hereby declared severable.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

Approved by the Governor: July 22, 1982.

Published in the Official Journal of the State: August 17, 1982.

A true copy:

JAMES H. "Jim" BROWN
Secretary of State.

APPENDIX F

IN THE SUPREME COURT OF THE
STATE OF LOUISIANA

SUCCESSION OF CHARLES HASKEL GRICE;
SUSAN MARIE BREAUX BOUDREAUX,
APPELLANT

NO. 84-CA-1761

AGNES BOUTTE GRICE,
APPELLEE

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

TO THE SUPREME COURT OF THE STATE OF LOUISIANA, AND THE THIRTY-SECOND JUDICIAL DISTRICT COURT FOR THE PARISH OF TERREBONNE, LOUISIANA:

NOTICE is hereby given that Susan Marie Breaux Boudreaux, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment entered in this proceeding by the Supreme Court of Louisiana, on February 21, 1985, on denial of rehearing, reversing the judgment of the Thirty-second Judicial District Court, Parish of Terrebonne, State of Louisiana.

This appeal is taken pursuant to 28 U.S.C. Sec. 1257(2).

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Supreme Court
of Louisiana

March 7 1:16 P.M. '85

Frans J. LaBranche, Jr.
Clerk of Court

Attorneys for Appellant

CERTIFICATE OF SERVICE

I certify that I have this day deposited the foregoing notice in a United States Post Office, with first-class postage prepaid, addressed to counsel of record for Appellee, H. Sanders O'Neal, Esquire, P. O. Box 590, Houma, Louisiana 70369, and another addressed to Hon. William Guste, Esquire, Attorney General of the State of Louisiana, State Capitol, Baton Rouge, Louisiana.

Baton Rouge, Louisiana, March 5, 1985.

s/Ashton L. Stewart

Ashton L. Stewart
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March 11, 1985

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RE: No. 84-CA-1761
Succession of Charles Haskel Grice

Dear Counsel:

This is to advise that the Court has granted your Motion For Stay of this Court's Judgment pending appeal to

the United States Supreme Court, with regard to the above entitled matter.

With kindest regards, I remain,

Very truly yours,

s/Frans J. Labranche, Jr.
Clerk of Court

FJLJr/kf
ccs: Keith Whipple, Esq.
H. Sanders O'Neal, Esq.
Hon. William J. Guste, Jr.
Hon. Wilmore J. Broussard, Jr.
Hon. I. Robert Boudreaux

Office - Supreme Court, U.S.
FILED
JUN 7 1985
ALEXANDER L. STEVAS
CLERK

NO. 84-1591

In the Supreme Court of the United States

OCTOBER TERM 1984

SUCCESSION OF CHARLES HASKEL GRICE,
SUSAN MARIE BREAUX BOUDREAUX,
Appellant

AGNES BOUTTE GRICE,
Appellee

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF LOUISIANA

MOTION TO DISMISS OR TO AFFIRM

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QUESTION PRESENTED

Did the Supreme Court of Louisiana err in holding Louisiana Civil Code Article 209 constitutional by finding that nineteen years from birth is sufficiently long to provide a reasonable opportunity to those with an interest in illegitimate children to bring suit for filiation on their behalf and that the nineteen year limitation on that opportunity is substantially related to the state's interest?[1]

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[1] The State of Louisiana was not a party to this proceeding in the state courts. We present this Motion in compliance with the Court's request that we respond. The only parties to this proceeding are Appellant, Susan Marie Boudreaux, and Appellee, Agnes Boutte Grice.

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IN THE SUPREME COURT OF
THE UNITED STATES
October Term, 1984

SUCCESSION OF CHARLES HASKEL GRICE,
SUSAN MARIE BREAUX BOUDREAUX,
Appellant,

AGNES BOUTTE GRICE,
Appellee

MOTION IN THE ALTERNATIVE TO DISMISS OR TO AFFIRM

May it please the Court:

The State of Louisiana moves that the appeal herein taken be dismissed on the ground that said appeal does not present a substantial federal question.

OPINION BELOW

This is an appeal from a decision of the Supreme Court of Louisiana which rejected the appellant's contention that Louisiana Civil Code Article 209 denies to an illegitimate child the equal protection of the laws and due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

JURISDICTION

The jurisdictional requisites are adequately set forth in the appellant's jurisdictional statement.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Louisiana Civil Code Article 209 provides as follows:

> A. A child not entitled to legitimate filiation nor filiated by the initiative of the parent by legitimation or by acknowledgment under Article 203 must prove filiation as to an alleged living parent by a preponderance of the evidence in a civil proceeding instituted by the child or on his behalf within the time limit provided in this article.
>
> B. A child not entitled to legitimate filiation nor filiated by the initiative of the parent by legitimation or by acknowledgment under Article 203 must prove filiation as to an alleged deceased parent by clear and convincing evidence in a civil proceeding instituted by the child or on his behalf within the time limit provided in this article.
>
> C. The proceeding required by this article must be brought within one year of the death of the alleged parent or within nineteen years of the child's birth, whichever first occurs. This time limitation shall run against all persons, including minors and interdicts. If the proceeding is not timely instituted, the child may not thereafter establish his filiation, except for the sole purpose of establishing the right to recover damages under Article 2315. A proceeding for that purpose may be brought within one year of the death of the alleged parent and may be cumulated with the action to recover damages.
>
> D. The right to bring this proceeding is heritable.

Other pertinent constitutional and statutory provisions are set forth in the appellant's jurisdictional statement.

STATEMENT OF THE CASE

Louisiana Civil Code Article 209 provides two tests for proof of filiation by a child who is not entitled to legitimate filiation nor filiated by the initiative of the parent or by acknowledgment. If the alleged parent is living the child must prove filiation by a preponderance of the evidence in a civil proceeding brought within nineteen years of the child's birth. If the alleged parent is deceased, however, the child must prove filiation by clear and convincing evidence in a civil proceeding instituted by the child or on his behalf within one year of the death of the alleged parent or within nineteen years of the child's birth, whichever first occurs.

In her jurisdictional statement, the appellant alleges that she was born on June 27, 1951. Her mother and her alleged father were never married to each other. Her alleged father, Charles Haskel Grice, died intestate on March 8, 1983. The appellant admits that she did not file a civil proceeding to prove filiation within nineteen years of her birth. Instead, some thirty-two years after her birth and some thirteen days after her alleged parent's death, she petitioned the state district court to appoint her provisional administratrix of his succession. She was appointed by the trial court.

The widow of the appellant's alleged parent petitioned the state court to remove the appellant as provisional administratrix for the reason that at the time of the death

more than nineteen years had elapsed since the appellant's birth and that, pursuant to Civil Code Article 209, appellant was barred from proving filiation. The appellant argued that article 209 is unconstitutional on equal protection grounds in that it requires that an action to prove filiation be brought within nineteen years of birth.

The trial court determined that article 209 was unconstitutional. The Louisiana Supreme Court reversed the trial court. It held that the nineteen year limitation is sufficient to provide a reasonable opportunity to those with an interest in illegitimate children to bring suit on their behalf and that the time limitation bears a substantial relation to the state's legitimate interest.

The appellant would have this court reverse the State Court and invalidate Civil Code Article 209 because the elevated burden of proof required to prove filiation after the death of the alleged parent satisfies the only real state interest in this kind of case which leaves the nineteen year time limitation unsupported by a state interest.

ARGUMENT

The appellant's argument is seriously flawed. The Louisiana statute under attack here does not mandate a combination of absolute requirements as a precondition to inheritance such as that invalidated by this Court in *Trimble v. Gordon*, 430 U.S. 762 (1977). Rather, it addresses two different factual situations each of which has inherent problems that affect a different legitimate state interest. In any given situation, however, only one section of the statute, and its accompanying requirements, applies.

For analytical purposes, this appeal is akin to that in *Lalli v. Lalli*, 439 U.S. 259 (1978), wherein the Court noted that only a single requirement of the statute was at issue even though the statute required both that the order of filiation by made during the lifetime of the father *and* that the proceeding for filiation be commenced within two years from the birth of the child. The Court declined to rule on the two year limitation because "if the rule that paternity be judicially declared during the father's liftime were upheld, the appellant would lose for failure to comply with that requirement alone." 439 U.S. at footnote 5, pg. 267. Likewise, if the 19 years from birth statute of limitation at issue herein is valid, the appellant at bar loses for failure to comply with that aspect alone.

Statutes of limitation previously have been upheld by this Court because they "spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost." *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1945). This Court further recognized that such limitations are necessarily arbitrary but must be sufficiently long to provide a "reasonable opportunity for those with an interest in such [illegitimate] children to assert claims on their behalf." *Mills v. Habluetzel*, 456 U.S. 91, 99 (1982).

The Louisiana statute clearly meets the tests of reasonableness applied by this Court in *Pickett v. Brown*, ___ U.S. ___, 103 S.Ct. 2199 (1983) and *Mills v. Habluetzel*, 456 U.S. 91 (1982). In those decisions the Court held that both a one year and a two year period of limitation were violative of equal protection because of the many obstacles to bringing suit so soon after an illegitimate

birth. The difficult circumstances that required the invalidation of both the *Mills* one year and the *Pickett* two year periods of limitation are not present under the Louisiana statute.

For example, a positive feature of the nineteen year period within which suit for filiation is permitted is that it reaches beyond the age of majority.[1] Thus, a child does not have to rely on its parent or upon the state to bring its claim. Note also that after the passage of 18 years, neither the mother nor the child has the right to seek child support so that the fear that the parent will retaliate by discontinuing voluntary support is not relevant to the Louisiana period of limitations.

Moreover, the mother has 18 years to recover from the difficulties inherent in the birth such as the financial difficulties caused by delivery. She and the child have 19 years to recover from the disapproval of family and community that was referred to as an obstacle in *Mills* and *Pickett*. Nor is the mother's desire not to alienate the affection of the alleged father a major factor inasmuch as the child has a year after majority within which to file a suit for filiation without the mother's consent or participation. Nineteen years from birth clearly negates the fears raised in the concurring opinion in *Mills* and by the main opinion in *Pickett*.

Nineteen years also is adequate to meet the second inquiry required in the analysis of the constitutionality of a contested statute. Such a limitation is more than

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[1] Civil Code Article 37 provides that a child reaches majority at the age of 18 years.

substantially related to the State's interest in avoiding stale or fraudulent claims.[2] The Court held in *Mills*, 456 U.S. at 101, that it could "conceive of no evidence essential to paternity suits that invariably will be lost in only one year, nor is it evident that the passage of 12 months will appreciably increase the likelihood of fraudulent claims." Nineteen years is, however, a different matter.

The likelihood that grandparents and siblings of the parents will die or will suffer decreased mental faculties is greatly increased by the passage of nineteen years. It also is much more likely that the memories of friends and neighbors will have faded or that they will have lost touch with the principals involved over such a lengthy period of years. The Louisiana limitations period certainly is more than an "improvement in degree" over the periods invalidated by this Court. The Louisiana statute attempts to eradicate the real danger that proof of such an intimate act as that involved in the proof of filiation will be lost. The State of Louisiana submits that the statute of limitations provided by Article 209 reasonably addresses that legitimate state interest. Thus, the appellant's contention that the statute is unconstitutional presents no federal question.

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[2] The elevated burden of proof that is applicable only if suit is filed after the death of the alleged parent, however, is related to the state's interest in the orderly disposition of property at death. The state's interest in the disposition of property has long been recognized. See *Lalli v. Lalli*, 439 U.S. 259, 268 (1978). "This interest is directly implicated in paternal inheritance by illegitimate children because of the peculiar problems of proof that are involved." 439 U.S. at 268. The method by which to achieve the accurate and efficient distribution of property at death is "a matter particularly within the competence of the individual states." *Trimble v. Gordon*, 430 U.S. 762, 771 (1977). The States are free to fashion their requirements of proof and this Court has recognized the enhanced problems in proof that arise when an alleged father is deceased. *Lalli v. Lalli*, 439 U.S. at 270-271.

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CONCLUSION

The state's motion to dismiss the appeal, or in the alternative to affirm the State Supreme Court should, therefore, be sustained.

Respectfully submitted,

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

KENDALL L. VICK
ASSISTANT ATTORNEY GENERAL

BY:_____
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CERTIFICATE OF SERVICE

I, Eavelyn T. Brooks, one of the attorneys for the State of Louisiana, respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the _____ day of June, 1985, I served copies of the foregoing Motion to Dismiss or to Affirm on the serveral parties thereto, as follows:

1. On Susan Marie Breaux Boudreaux, appellee, by mailing a copy, in a duly addressed envelope, with postage prepaid, to her attorney of record, Ashton L. Stewart, Esquire, at his office at 339 Florida Street, Suite 400, Baton Rouge, Louisiana, 70801.

2. On Agnes Boutte Grice, appellant, through her attorney of record, H. Sanders O'Neal, Esquire, Post Office Box 590, Houma, Louisiana, 70369.

All parties required to be served have been served.

New Orleans, Louisiana, this _____ day of June, 1985.

EAVELYN T. BROOKS
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